

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

JOHN MERRILEES

Index No.

Plaintiff(s),

*Summons**-against-*ROMAN CATHOLIC DIOCESE OF BUFFALO AND
BISHOP RICHARD J. MALONE

Date Index No. Purchased:

Defendant(s).

To the above named Defendant(s)

Roman Catholic Diocese of Buffalo, New York, 795 Main Street, Buffalo, NY 14203
Bishop Richard J. Malone, 795 Main Street, Buffalo, NY 14203

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is Defendants' principal place of business,
which is in Erie County

Dated: August 14, 2019

Seeger Weiss LLP

by 

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

JOHN MERRILEES,

Index No. _____

Plaintiff,

-against-

COMPLAINT

THE ROMAN CATHOLIC DIOCESE
OF BUFFALO AND BISHOP RICHARD J. MALONE

JURY TRIAL DEMANDED

Defendants.

Plaintiff, John Merrilees, by and through the undersigned attorneys, complains of Defendants, The Roman Catholic Diocese of Buffalo and Bishop Richard J. Malone, and alleges on personal knowledge as to himself and on information and belief as to all other matters, as follows:

PARTIES

1. Plaintiff John Merrilees is a sixty-seven year old resident of New York. Plaintiff was fourteen to seventeen years old at the time of the abuse.

2. Defendant Roman Catholic Diocese of Buffalo, New York a/k/a Diocese of Buffalo ("the Diocese") was and continues to be an organization or entity which includes, but is not limited to, civil corporations, decision making entities, officials, and employees, authorized to conduct business and conducting business in the State of New York with its principal place of business at 795 Main Street, Buffalo, New York 14203.

3. Defendant Bishop Richard J. Malone (“Malone”) is the current Bishop of the Diocese of Buffalo, which has its principal place of business at 795 Main Street, Buffalo, New York, 14203.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over the Defendants pursuant to CPLR §§ 301 and 302, because Plaintiff’s claims arise from the tortious acts of Defendants that were committed in the State of New York.

5. The Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

6. Venue is proper in the County of Erie under CPLR §503 because all or a substantial part of the events or omissions giving rise to this cause of action occurred in Erie County, New York.

7. The federal courts lack jurisdiction over this suit. Plaintiff’s claim raises no federal question nor does Plaintiff seek relief under a federal law, statute, regulation, treaty, or the United States Constitution. Accordingly, Plaintiff’s right to relief does not depend on the resolution of a substantial question of federal law. Further, this lawsuit cannot be removed because there is no complete diversity, as at least one Defendant resides or has their principal place of business in New York. Therefore, removal would be improper.

FACTS

8. Loren Nys (“Nys”) was ordained as a Roman Catholic priest in 1967 and served within the Buffalo Diocese at St. Mary’s High School, 142 Laverack Avenue, Lancaster, New York 14086.

9. Nys was a member of the Milwaukee-based Society of the Divine Savior, the Salvatorians.

10. Nys was a religion teacher at St. Mary's High School where Plaintiff attended 9th through 12th grade. Nys was later promoted to principal.

11. Nys was a close friend of Plaintiff's family and would often join the family for Sunday dinner.

12. Nys' abuse of Plaintiff began gradually. He started by driving Plaintiff to the Buffalo airport to watch the airplanes take off and land since Nys knew that Plaintiff was interested in aviation. When they were parked, Nys would rub his hands back and forth between his legs pleasuring himself while John was right next to him in the front passenger's seat. These airport trips occurred approximately one time per month.

13. Nys also frequently commented on Plaintiff's appearance and constantly grabbed his butt.

14. Plaintiff was athletic and played sports in high school. After a practice or a game, Nys would follow him into the locker room and watch Plaintiff and other boys while they were naked showering. Nys was not a coach on any athletic teams.

15. Plaintiff told his parents about the abuse and they made complaints to Defendant, the Diocese.

16. Even after these complaints, Nys was kept in ministry. Defendant the Diocese claimed that the "issues were addressed at the time".

17. In 2014, the order removed Nys as pastor after discovery of two letters from parents accusing him of "inappropriate conduct with youth."

18. In 2014 Nys was also removed from active ministry and was placed on a “safety plan.”

19. In 2016, Nys was accused of repeatedly raping another boy when he was fourteen years old in the 1970s.

20. Defendant Malone is the current Bishop of the Diocese of Buffalo and was appointed in 2012 as the 14th Bishop of the Diocese of Buffalo.

21. As bishop, Defendant Malone was and is empowered by the Diocese to supervise and control all priests within the Diocese.

22. As bishop, Defendant Malone had and has access to and knowledge of information regarding the sexual misconduct of priests, including knowledge of the widespread pedophilia and sexually abusive conduct of priests within the Diocese.

23. Defendant Malone has permitted at least one (1) predator priest to return to active ministry after being suspended for credible sexual abuse allegations. He later ignored new allegations of sexual abuse against this priest and misled the public about the priest’s history.

24. Defendant Malone has and continues to permit predatory priests in active ministry to work around children despite allegations of sexual abuse against minors.

25. Defendant Malone also intentionally omitted the names of some priests accused of abuse or misconduct from a publicly released list of names.

26. In approximately March 2018, Defendants publicly admitted they knew of 42 priests who worked in the Diocese that had been accused of sexual misconduct with minors. Defendants identified these priests by name. Nys was not one of the priests identified in this original list.

27. Several months later, internal church documents were leaked revealing Defendant Malone's intentional cover-up of over 60 additional priests credibly accused of sexual misconduct with minors.

28. In approximately November 2018, Defendants supplemented their original list to include 36 more priests who worked in the Diocese that had been accused of sexual misconduct with minors. Nys was included in this list.

29. Both lists specified that "Priests who received a single allegation after their death are not included".

30. The list continues to be supplemented with additional names of credibly accused priests.

31. Defendants continue to conceal important information about the priests on that list and the names and information about accused priests not publicly disclosed. Additional information has also not been disclosed about the credibly accused priests' patterns of grooming and sexual abuse, and the Defendants' knowledge thereof.

32. As a direct result of the Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great, permanent harm, including but not limited to severe emotional distress, humiliation, embarrassment and loss of self-esteem.

33. Plaintiff has also suffered a severe disruption of his enjoyment of life, as well as his relationships with family, fellow Catholics, and others. His religious faith, together with its fellowship and other benefits, has been destroyed.

34. The trauma suffered by Plaintiff has resulted in chronic mental health issues, alcoholism, and drug abuse all of which have required and/or will require counseling and other treatment.

**CAUSES OF ACTION AGAINST DEFENDANT ROMAN CATHOLIC DIOCESE OF
BUFFALO**

A. VICARIOUS LIABILITY/*RESPONDEAT SUPERIOR*

35. Plaintiff incorporates each and every allegation set forth in every one of the aforementioned paragraphs as if fully set forth herein.

36. Plaintiff affirmatively pleads that any alleged tortious acts of Nys were committed while he was acting in the course and scope of his employment with Defendant the Diocese, or while he were acting as an agent or on behalf of Defendant the Diocese, and are thus imputed to Defendant the Diocese under a legal theory of *respondeat superior*.

B. NEGLIGENCE

37. Plaintiff incorporates each and every allegation set forth in every one of the aforementioned paragraphs as if fully set forth herein.

38. Defendant the Diocese held itself out as providing safe places for religious worship, spiritual development and growth, learning and education, or engaging in youth and/or community activities. Defendant the Diocese had, adopted, and/or assumed an express and/or implied duty to provide a reasonably safe environment for Plaintiff and assumed the duty to protect and care for him.

39. Defendant the Diocese owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Diocesan clergy, including Nys, in their roles as teacher, priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer.

40. Defendant the Diocese breached its duties of care in one or more of the following ways by and through the acts and omissions of its employees, servants and agents, including

supervisory and managerial personnel, all acting at all material times within the course and scope of their employment, service or agency:

- a. Negligently hiring Nys as it knew or should have known that he posed a threat of sexual abuse to children;
- b. Negligently retaining Nys as it knew or should have known that he posed a threat of sexual abuse to children;
- c. Negligently directing Nys as it knew or should have known that he posed a threat of sexual abuse to children;
- d. Negligently supervising Nys as it knew or should have known that he posed a threat of sexual abuse to children;
- e. Failing to investigate the background of Nys before placing him into close contact with Plaintiff;
- f. "Covering up" or otherwise failing to disclose the harmful acts of Nys and other abusive clergy;
- g. Failing to warn Plaintiff, his parents and/or legal guardians of Nys's conduct despite having actual or constructive knowledge of Nys's sexually abusive tendencies and/or misconduct;
- h. Assigning or allowing Defendant Nys to have contact with Plaintiff despite having constructive and/or actual knowledge sexual abuse;
- i. Failing to report Nys's sexual abuse to appropriate law enforcement agencies;
- j. Minimizing, ignoring or excusing priestly misconduct over a period of decades;
- k. Failing to provide a safe environment to children and other parishoners within the churches, sacristies, schools and rectories operated and/or owned by the Diocese;
- l. Failing to train priests and Diocesan employees to identify signs of child molestation by fellow employees;
- m. Failing to implement and maintain effective policies and procedures to prevent sexual abuse and abuse of children;
- n. Failing to investigate complaints of abuse properly;
- o. Failing to exercise due care under the circumstances.

41. As a foreseeable, direct, and proximate result of Defendant the Diocese's negligence, Plaintiff has suffered and will continue to suffer the injuries described herein.

C. GROSS NEGLIGENCE

42. Plaintiff incorporates each and every allegation set forth in every one of the aforementioned paragraphs as if fully set forth herein.

43. Defendant the Diocese's acts and omissions, as previously described, were committed with complete and reckless disregard for, and with willful, wanton, and actual conscious indifference to, the rights, safety, and welfare of Plaintiff and the general public. The nature of Defendant the Diocese's acts and omissions were of such a nature as to constitute gross negligence and malice. Specifically, Defendant the Diocese's undertook a continuous course of action in the form of conscious decisions, with subjective knowledge and awareness of the risks and hazards presented by each decision as discussed above and incorporated herein, to expose Plaintiff and others to sexual abuse and/or sexual assault, and exercised not even slight care or diligence. When viewed objectively from the standpoint of Defendant the Diocese at the time of their occurrence, said acts and omissions involved reckless disregard of or indifference to an extreme degree of physical, mental, and psychological risk and danger, considering the probability and the magnitude of the potential harm to others. Defendant the Diocese committed various acts and omissions constituting gross negligence, as outlined above. Such gross negligence was a foreseeable, direct, and proximate cause of the occurrence and Plaintiff's injuries and damages.

D. BREACH OF DUTY *IN LOCO PARENTIS*

44. Plaintiff incorporates each and every allegation set forth in every one of the aforementioned paragraphs as if fully set forth herein.

45. While he was a minor, Plaintiff was entrusted by his parents to the control of Defendant the Diocese for the purpose of providing Plaintiff an education and spiritual development.

46. During the times that Plaintiff was in the facilities or programs owned, conducted or approved by Defendant the Diocese, he was under its control and supervision of Defendant the Diocese. Defendant the diocese owed a duty to Plaintiff to act *in loco parentis*, and to prevent foreseeable injuries.

47. Defendant the Diocese breached its duty to act *in loco parentis*. As a foreseeable, direct, and proximate result of that breach of duty, Plaintiff suffered injuries.

E. BREACH OF FIDUCIARY DUTY

48. Plaintiff incorporates each and every allegation set forth in every one of the aforementioned paragraphs as if fully set forth herein.

49. There is a fiduciary relationship between Plaintiff and Defendant the Diocese. This relationship is based on the fact that Plaintiff trusted his physical, mental, psychological, and spiritual care to the priests, officers, directors, officials, employees, volunteers, servants, and/or all those acting as agents of Defendant the Diocese or on its behalf, who held themselves out as beholden to a spiritual and interpersonal duty to provide advice, benefit, and guidance to Plaintiff.

50. Because of this fiduciary relationship, Defendant the Diocese was required and had a duty to act in the best interests of Plaintiff and to protect him while he was a minor child.

51. Defendant the Diocese breached its fiduciary duty to Plaintiff.

52. As a foreseeable, direct, and proximate result of Defendant the Diocese's breach of fiduciary duty, Plaintiff has suffered and will continue to suffer the injuries described herein.

F. BREACH OF NON-DELEGABLE DUTY

53. Plaintiff incorporates each and every allegation set forth in every one of the aforementioned paragraphs as if fully set forth herein.

54. When Plaintiff was a minor, he was placed into the care of Defendant the Diocese for the purpose of providing Plaintiff with a safe environment in which to receive an education and/or participate in religious worship, spiritual development, and community service. Because Defendant the Diocese was entrusted with the care of Plaintiff while he was a minor child, there existed a non-delegable duty of care that went from Defendant the Diocese to Plaintiff.

55. Since Plaintiff was a minor child at the time, Defendant the Diocese was in the best position to prevent the abuse that Plaintiff suffered at the hands of Nys, and/or stop such abuse when they learned of it.

56. Defendant the Diocese failed to prevent the abuse and harm Plaintiff suffered, and/or they failed to stop it once they were aware of or should have been aware of the abuse. This failure was a breach of Defendant the Diocese's non-delegable duty to Plaintiff.

57. As a foreseeable, direct, and proximate result of this breach, Plaintiff suffered significant injuries and long-lasting damages.

G. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

58. Plaintiff incorporates each and every allegation set forth in every one of the aforementioned paragraphs as if fully set forth herein.

59. As described above, Defendant the Diocese owed Plaintiff various duties, which it negligently breached. Defendant the Diocese's negligence unreasonably endangered Plaintiff and caused him to fear for his own safety.

60. As a foreseeable, direct, and proximate result of Defendant the Diocese's negligence, Plaintiff suffered severe injuries, including but not limited to mental and emotional distress.

**CAUSES OF ACTION AGAINST DEFENDANTS ROMAN CATHOLIC DIOCESE OF
BUFFALO AND BISHOP RICHARD J. MALONE**

H. FRAUDULENT CONCEALMENT

61. Plaintiff incorporates each and every allegation set forth in every one of the aforementioned paragraphs as if fully set forth herein.

62. For many years after Plaintiff's abuse at the hands of Nys, Defendants engaged in a conscious, deliberate plan to conceal the abuse, including but not limited to:

- a. Concealing from the public the sexual abuse committed by Nys;
- b. Concealing the identities of Nys and other pedophilic priests;
- c. Concealing from appropriate law enforcement officials the sexual abuse committed by Nys against Plaintiff and/or other minors;
- d. Impeding or otherwise preventing Plaintiff and other victims from pursuing legal action against Nys.

63. Defendants had a duty to disclose the information it concealed in paragraph 62 and its concealment therefore amounted to a misrepresentation.

64. Defendants concealed this information with fraudulent intent, with the goal of inducing reliance.

65. Plaintiff, and others, justifiably relied upon Defendants' concealment of this material information.

66. As a foreseeable, direct, and proximate result of Defendants' concealment, Plaintiff suffered significant injuries.

DAMAGES

67. Plaintiff seeks compensation for the following damages that resulted from his abuse and defendants' other culpable acts and omissions:

- a. Past mental anguish of Plaintiff, and that he will, in all probability, suffer in the future;
- b. Past physical pain and suffering of Plaintiff, and that he will, in all probability, suffer in the future;
- c. The medical expenses that Plaintiff has incurred in the past and will, in all probability continue to incur in the future;
- d. Past and future lost wages;
- e. Loss of earning capacity;
- f. Cost of suit;
- g. Such reasonable and necessary attorney's fees as are allowed by law;
- h. Exemplary damages; and
- i. Any and all other damages to which Plaintiff may be justly entitled.

PRESERVATION OF EVIDENCE

68. Plaintiff hereby requests and demand that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit, or the damages resulting therefrom, including photographs; videotapes, audiotapes; recordings; business records; medical records; billing records; estimates; invoices; checks; correspondence; memoranda; files; facsimiles; emails; voice mail; text messages; investigations; cellular telephone records; calendar entries; and any electronic image, data, or information related to Plaintiff(s), the references incident, or any damages resulting therefrom. Failure to maintain such items will constitute spoliation of the evidence.

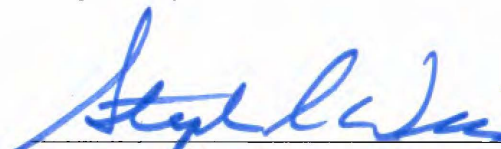
JURY DEMAND

69. Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays that Defendants be cited in terms of law to appear and answer herein, that upon final trial and hearing hereof, that Plaintiff recovers damages from Defendants in accordance with the evidence; that Plaintiff recovers costs of court herein expended; that Plaintiff recovers interest to which Plaintiff is justly entitled under law, both prejudgment and post-judgment; that Plaintiff recovers actual damages; that Plaintiff is entitled to recover compensatory damages; that Plaintiff recovers punitive damages; and for such other further relief; both general and special, both in law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,



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